

E-132, 299/SA-90-872, E-132, 299/SA-90-872 ORDER FOR HEARING AND
ORDER CONSOLIDATING DOCKETS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna
Patrice Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the
Application of the City of
Rochester for Determination of
Appropriate Terms for the
Acquisition of Electric
Service Area Rights and
Facilities of People's
Cooperative Power Association
in the Newly Platted Area
Known as South Park
Subdivision

ISSUE DATE: January 8, 1991

DOCKET NO. E-132, 299/SA-90-
872

In the Matter of the
Application of the City of
Rochester to Adjust its
Service Area Boundary with
People's Cooperative Power
Association, Inc. (Multi-Area)

E-132, 299/SA-88-996

NOTICE AND ORDER FOR HEARING
AND ORDER CONSOLIDATING
DOCKETS

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On October 9, 1990 the City of Rochester filed a petition under Minn. Stat. § 216B.44 (1990), stating its intention to extend its assigned service area to include a recently annexed area known as South Park Subdivision, currently within the assigned service area of People's Cooperative Power Association (the co-op). The petition asked the Commission to determine appropriate compensation for service rights to the area and related facilities.

The co-op and the Department of Public Service (the Department) filed responses asking the Commission to refer the matter to the Office of Administrative Hearings for contested case proceedings. The City agreed that contested case proceedings were necessary.

The matter came before the Commission on November 21, 1990.

FINDINGS AND CONCLUSIONS

II. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44 (1990). The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44 (1990).

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due the co-op. That determination turns on specific facts which are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. CONSOLIDATION WITH EXISTING CONTESTED CASE DOCKET

The Commission believes that this matter should be consolidated with another contested case docket, In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc. (Multi-Area), Commission Docket No. E-132, 299/SA-88-996; OAH Docket No. 9-2500-4051-2. The parties to both dockets are identical; the issues are similar. Both dockets are compensation proceedings involving annexed areas. The earlier docket has not yet reached a stage where consolidation would delay its resolution. The Commission will therefore consolidate the two dockets, to conserve the resources of all parties, the Commission, and the Office of Administrative Hearings.

IV. ISSUES TO BE ADDRESSED

Minn. Stat. § 216B.44 (1990) requires consideration of the following factors in cases like the present one: the original cost of any property acquired by the municipality, depreciation on such property, loss of revenue by the displaced utility, expenses resulting from integration of facilities, and other appropriate factors.

The parties shall address the above issues in the course of contested case proceedings.

V. PROCEDURAL OUTLINE

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Phyllis A. Reha. Her address and telephone number are as follows: Office

of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 341-7611.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1990); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1990).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101 (612) 296-0410.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

C. Intervention

Current parties to this proceeding are the City of Rochester, People's Cooperative Power Association, and the Department of Public Service. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such

petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

E. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held to determine the compensation due People's Cooperative Power Association for the City of Rochester's acquisition of the portion of its service territory known as South Park Subdivision.
2. This proceeding shall be consolidated with the ongoing contested case proceeding In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc. (Multi-Area), Commission Docket No. E-132, 299/SA-88-996; OAH Docket No. 9-2500-4051-2.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
5th Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of the
Application of the City of
Rochester to Adjust its
Service Area Boundary with
People's Cooperative Power
Association, Inc. (Multi-Area)

MPUC Docket No. E-132, 299/SA-
88-996

OAH Docket No. 9-2500-4051-2

NOTICE OF APPEARANCE

Date of Hearing: To Be Determined by Administrative Law Judge

Name and Telephone Number of Administrative Law Judge:

Phyllis A. Reha
(612) 341-7611

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the
above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____